SINGAPORE REPORTS.

TAN SIAK HENG v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) April 24, 1950]

[Singapore — Magistrate's Appeal No. 183 of 1949]

Penal Code, s. 408 — Criminal breach of trust — Admissibility of evidence — Records produced by person who did not compile them and recording facts of which he had no personal knowledge — No proof of appropriation of property.

This was an appeal against convictions on three charges of criminal breach of trust. The appellant was employed by the Singapore Traction Co. Ltd. as a conductor on an omnibus. It was proved that he issued a used ticket to a passenger who happened to be a detective. At the trial, the deputy accountant of the Singapore Traction Company produced certain records in an attempt to show that the money received had not been paid to the Company. The records were not compiled by the witness and he had no personal knowledge of the facts recorded.

Held, (1) that as the records were not compiled by the witness and as he had no personal knowledge of the recorded facts, they should not have been admitted in evidence; (2) that apart from the records, there was no evidence of the failure to pay over the money, and the charges were not therefore proved.

MAGISTRATE'S APPEAL.

Mark Morrison for the appellant.

A. V. Winslow for the Crown.

Murray-Aynsley, C. J. : — In this case the appellant was charged as follows :—

(1) That he, on or about 12.10.49 at Singapore, in the capacity of a bus conductor bearing No. 332 (old No. 455) employed by the Singapore Traction Co. Ltd., on omnibus No. STC 93 travelling between Telok Kurau and Chulia Street being entrusted with property, to wit, the collection of fares from passengers, did commit criminal breach of trust in respect of 10 cents, to wit, by failing to deliver to the Company, the sum of 10 cents, paid to him by way of fare at or about 12.50 p.m. by Lim Geok Koon a passenger between Stamford Road and Chulia Street, for which he issued no ticket, and that he thereby committed an offence punishable under section 408 of the Penal Code.

(2) That he, on or about 12.10.49 at Singapore, in the capacity of a bus conductor bearing No. 332 (old No. 455) employed by the Singapore Traction Co. Ltd., on omnibus No. STC 93 travelling between Telok Kurau and Chulia Street being entrusted with property, to wit, the collection of fares from passengers, did commit criminal breach of trust in respect of 10 cents, to wit, by failing to deliver to the Company, the sum of 10 cents, paid to him by way of fare at or about 1.05 p.m. by Chan Kim Swee a passenger between Bras Basah Road and Kallang Road, for which he issued no ticket, and that he thereby committed an offence punishable under section 408 of the Penal Code.

(3) That he, on or about 13.10.49 at Singapore, in the capacity of a bus conductor, bearing No. 332 (old No. 455) employed by the Singapore Traction Co. Ltd., on omnibus STC No. 109 travelling between Telok Kurau and Chulia Street being entrusted with property, to wit, the collection of fares from passengers, did commit criminal breach of trust in respect of 10 cents, to wit, by failing to deliver to the Company, the sum of 10 cents paid to him by way of fare at or about 3.15 p.m. by Chan Kim Swee a passenger between Geylang, Lorong 25, and Joo Chiat Place for which he issued a used 20 cent ticket No. 3N 9632 and that he thereby committed an offence punishable under section 408 of the Penal Code.

The facts are as follows: The appellant was employed as a conductor on an omnibus. It was proved that he issued a used ticket to a passenger who happened to be a detective. An attempt was made to prove criminal breach of trust in respect of the sum of money tendered as a fare by calling the deputy accountant of the Company who produced certain records which had been compiled by others and recorded facts of which he had no personal knowledge. In the circumstances it appeared that the charge was not proved. The offence is failure to pay over money, not the issue of a used ticket. If the failure to pay over the money had been proved, the issue of the used ticket might have been very material evidence of a fraudulent intent, but, by itself it did not prove the commission of any offence.

The appeal was, therefore, allowed and the conviction quashed.

Appeal allowed.

IN THE MATTER OF MARIA HUBERDINA HERTOGH, AN INFANT; AMINA BINTE MOHAMED v. THE CONSUL-GENERAL FOR THE NETHERLANDS.

[Court of Appeal (Evans, Storr and Thorogood, JJ.) July 28, 1950]

[Singapore — Civil Appeal No. 7 of 1950]

Guardianship of Infants Ordinance (Cap. 50) — Rules of the Supreme Court, Order 52 rule 23 — Form of Originating Summons — Necessity to serve on infant and on persons interested.

This was an appeal against orders made by the Honourable the Chief Justice of Singapore, whereby it was ordered that Maria Huberdina Hertogh be delivered to the custody of the Social Welfare Department, Singapore, and subsequently to the custody of the Consul-General for the Netherlands. The application was originally made by an ex parte Originating Summons in which it was prayed that Che Amina binte Mohamed (the appellant in the appeal) be ordered to deliver up Maria Huberdina Hertogh into the custody of the Social Welfare Department, Singapore, or that such further or other order be made as to the custody or maintenance of the said infant. The affidavit filed in support of the Originating Summons did not show the age of the infant, the nature and amount of its property and the names and addresses of the infant's nearest relatives as required by Order 52 rule 23(2) of the Rules of the Supreme Court. Nor was the Originating Summons served on the infant or on Amina binte Mohamed, the person who had custody of her.